IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 805

JULIAN LENTIN, DOING BUSINESS AS J. LENTIN LUMBER COMPANY,
Petitioner (Appellant-Defendant below),

vs.

CHESTER A. BOWLES, ADMINISTRATOR, OFFICE OF PRICE ADMINISTRATION FOR AND ON BEHALF OF THE UNITED STATES,
Respondent (Appellee-Plaintiff below).

PETITION FOR WRIT OF CERTIORARI TO UNITED STATES CIRCUIT COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT OF PETITION.

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PETITION FOR WRIT OF CERTIORARI.

Petitioner, Julian Lentin doing business as J. Lentin Lumber Co. at Chicago, represents that the United States Circuit Court of Appeals for the Seventh Circuit denied his petition for rehearing on December 5, 1945 (R. 305); and that said Court entered order and judgment on November 9, 1945 (R. 293; Opinion by Hon. Otto Kerner, C. J., (R. 283) affirming judgment for $45,665.94 and costs, together with permanent injunction against petitioner by

the District Court of the United States for the Northern District of Illinois, Eastern Division, Hon. John P. Barnes, D.J. presiding in a trial without jury (R. 254) in an action by Chester A. Bowles, Price Administrator, against petitioner involving OPA Maximum Price Regulations 94 (Appendix B) and 458 (Appendix C) (both as amended) relating to lumber (pp. 19, 21, *post* respectively).

As will be presently developed, it is not disputed that petitioner's gross profit was less than $3,000.00, for which judgment for $45,665.94 was entered against him.

The complaint, in two counts, against petitioner and eighteen others, the latter all purchasers, prays for injunctive relief and for treble damages on alleged excess prices amounting to $20,000.00 and *ad damnum* for $60,000.00, relating to nineteen car loads of Mexican Ponderosa Pine and oak lumber. During the trial, Chester A. Bowles, Price Administrator, was granted leave to amend his complaint to cover nine additional car loads by adding to the amount of treble damages claimed, an additional $30,000.00 making the total claimed $90,000.00 (R. 147). No injunctional order was entered against the eighteen purchaser defendants, nor were they included in the judgment (R. 60, 61, 254). The case against said purchaser defendants was not tried (R. 60, 61).

Petitioner, before placing orders for import shipment of Mexican lumber with the Pan American Trading Company (Hinojosa) of Kansas City, Missouri, sought (R. 180) information from Mr. Huntley, Senior Business Analyst of the Office of Price Administration (Chicago) (R. 179, 199, 200) to whom petitioner disclosed that petitioner had an opportunity to buy a certain number of car loads of Mexican Ponderosa Pine at a price. He was advised by Huntley that imported lumber was not subject to OPA price ceilings, and could be purchased without regard to regulations. Thereafter petitioner received Amendment 8 to

MPR 94 (set forth R. 42, 43). The fourth paragraph of the Press Release, which is a part of the Amendment, recites:

> "There are no price ceilings on purchases of Mexican pine lumber outside the United States, and both Defense Supplies Corporation *and the private importer* have been buying Mexican pine at prices close to the domestic pine ceilings for resale domestically to U. S. war agencies" (R. 42). (Italics ours.)

This recital of the Press Release was dismissed by the trial attorney for OPA by stating that the Amendment applied only to Defense Supplies Corporation, a government agency (R. 126, 179, 180) and not to any *private* purchasers (R. 127) and by the trial court's characterization of the Press Release as being of no binding effect.

Huntley at first denied the conversation with petitioner (R. 218); and afterwards stated that he did not remember it (R. 218), but that he (Huntley) had spoken to someone about Mexican import pine (R. 218).

Petitioner, in sixteen of the nineteen carloads* (import of Mexican lumber) was a broker or factor, in car load sales, and as such not subject to the damage provisions of Section 205 (e) of the Emergency Price Control Act of 1942, as amended (set forth as Appendix A, p. 17 *post*), which relates solely to sellers, and not to brokers, factors or purchasers. But the trial court refused to consider petitioner's offered evidence on that theory, giving as

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* An order (R. 272) was entered by the District Court on stipulation that the original exhibits be withdrawn and substituted by photostatic copies on appeal (R. 272). In connection with the printing of the record on appeal to the Circuit Court of Appeals, it was stipulated (R. 274) "that all of the photostatic copies of the Exhibits filed as a part of the record herein need not be printed but counsel for the parties may refer to the said Exhibits in their respective briefs and arguments." Petitioner intends to make application to this court to file 10 certified copies of his brief in the Court of Appeals.

reason that petitioner "tried to cover up the transaction to attempt to show he was a broker after he had title" (R. 190).

Petitioner placed his orders with the shipper Victor Hinojosa (doing business as Pan American Trading Company), a resident of Kansas City, Missouri, engaged as an importer of Mexican Ponderosa Pine (R. 209). Said Hinojosa, shipper of all of the pine involved, was not permitted by the trial court to testify that petitioner ordered the cars out car by car on the order of each particular purchaser served by petitioner (R. 211). The business practice of petitioner was to invoice* the purchaser at the exact price paid Hinojosa, the shipper, and an invoice for $3.00 or in three instances for $4.00 per MBM by petitioner for handling. In short, as to sixteen car loads, petitioner was a broker or factor and not subject to assessment of damages under Section 205 (e) of the Price Control Act of 1942, as amended.

As to the remaining three of the original car load lots, the trial court excluded petitioner's evidence and denied petitioner's offer of proof (R. 173) that petitioner had distribution yard facilities. Under Section 3 MPR 94, provision is made for higher prices for lumber sold in less than carload lots out of distribution yards.

Concerning the nine car loads added to the complaint, no evidence of overcharge is in this record other than that the attorney for the Price Administrator, in argument (R. 220) stated that he had established that the prices for the nine cars were computed the same way as the original nineteen cars and by applying the same "proportion", the overcharge on said nine additional cars would be $6,462.48 (R. 220).** On the basis of that "proportion"

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* See Plaintiff's (Respondent's) Exhibits 6, 6A, 6B, 14B, 19A, and 21A.

** Chart prepared by respondent, Plaintiff's Exhibit 51.

the trial court included in his finding a judgment in the sum of $12,942.96 as a part of the total judgment of $45,664.94 (R. 220). The latter amount was arrived at by the trial court by doubling the aggregate amount of alleged overcharges in plaintiff's (respondent's) Exhibit 51 and adding to same double the amount of respondent's "proportional" estimate.

Petitioner adduced as his witnesses several owners of the retail yards, who were among the purchaser defendants, to whom the lumber was sold, for the purpose of establishing the actual quality of the lumber when examined and graded by them (R. 153-155, 162, 169, 173, 177-191, 197); but all such testimony was excluded and the trial court denied petitioner's offer of proof that same would show that the actual grades contained in the cars were such as enabled the public to purchase at prices within the price ceilings (R. 154).

So, too, the trial court refused petitioner credit, viz., addition of $2.00 for specified 16, 18 and 20 foot lengths, 4 and 6 inch widths, as provided in MPR 94 (R. 117 to 126).* That item amounts to about $2,000.00 or to about $4,000.00 of the judgment.

The trial court allowed one Baxter to testify for the plaintiff that he was a lumber dealer and had been offered Mexican Ponderosa Pine by the Pan American Trading Company at $55.00 per M board feet and that he corresponded with the Kansas City office of OPA about this

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* Respondent's (Plaintiff's) Exhibits 4, 5b, 5c, 5d, 5e, 5f, 5g, 6, 6a, 7, 7a, 8c, 8d, 9, 9a, 10, 11, 11a, 12, 12a, 13a, 13b, 14, 14a, 15d, 15e, 16, 16a, 17, 17a, 18, 18a, 19, 20, 21, 22 and 23, are all copies of invoices from Pan American Trading Company, to J. Lentin Lumber Co., petitioner, from Pan American Trading Company to several retail yards which purchased the lumber, and from petitioner to said retail customers. See, also, Petition for Rehearing, R. 300, 301.

offer and was advised that the purchase would violate the price ceilings imposed by MPR 94 (R. 135 *et seq.*). Baxter thereupon refused to handle the lumber. Petitioner moved to strike Baxter's testimony (R. 158) and objected to the admission in evidence of letters between Baxter and said Kansas City office of OPA. The motion to strike was denied and the exhibits were received for the purpose of showing what petitioner should have known with his experience as a business man (R. 149).

The trial court stated that petitioner was

(1) a person who dodged the regulations (R. 231);

(2) a person who, by marking his invoices to show that the lumber was invoiced to retail purchasers at a price, and charging an additional sum for handling the lumber was thereby covering up his guilt by attempting to show that he was a broker (R. 190);

(3) a person who had mulcted the public out of $16,000.00 for the sake of making a profit of $2,400.00 (R. 189);

(4) a person who was particularly guilty of trying to evade the regulations because he consulted with officials of OPA (R. 179); and

(5) a person who was a defendant in one of the worst cases of violation of OPA regulations that had ever been presented to him (R. 230).

The plaintiff, Price Administrator, failed to introduce any evidence wherefrom the trial court could have arrived at its opinion of petitioner.

QUESTIONS PRESENTED.

I.

Is a judgment for statutory damages valid, where the trial judge is prejudiced against the class of case (exceeding ceiling prices under OPA) and prejudges the merits of the case upon the basis of said prejudice?

II.

As a rule of decision to serve as guidance for the future:

1. How certain should an OPA press release be? And should it operate uniformly throughout the United States?
2. Is a defendant in an overceiling price case barred from showing his good faith in ascertaining the scope of endlessly complicated regulations?
3. Is a broker or factor subject to the damage provision of Section 205 (e) Emergency Price Control Act as amended, notwithstanding that the section concerns itself with sellers only?
4. May damages be assessed against such defendant, as here, for nine additional cars, solely upon a mathematical theory of "proportion" without evidence as to the actual facts?
5. Where a regulation, such as MPR 94 authorizes higher prices at distribution yards, may a trial judge arbitrarily refuse to allow a defendant to show that he actually has distribution yards?

6. Where said regulation MPR 94 authorizes credit for 16, 18 and 20 foot lengths at $2.00 per M.B.M. may a trial court arbitrarily refuse to consider same and add about $4,000.00 to the amount of the judgment?

7. Is the entry of a permanent injunction valid in this case, in the light of the holding in *The Hecht Company* v. *Bowles, etc.*, 321 U. S. 321?

REASONS FOR ALLOWANCE OF WRIT.

1. Where a trial court by remarks not founded upon the record evidences prejudice against the case, as belonging to a class of cases, all proceedings on the hearing are void. The absence of the organic basis of due process of law renders the trial a mere mask and not a hearing according to the law of the land.

2. Under Section 205 (e) of the Emergency Price Control Act a broker or factor may not be subject to a damage action.

3. Should an OPA press release operate uniformly throughout the United States and may a layman seek the advice of a local OPA office and be condemned for relying thereon?

4. Every rule for the measure of damages has been violated by the entry of the judgment against petitioner for $45,665.94.

5. The judgment for $45,665.94, upon the undisputed showing that the gross profit to petitioner did not exceed $3,000.00, is cruel punishment not contemplated by either the so-called Emergency Price Control Act, or the Stabi-

lization Act, and constitutes confiscation of property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

6. In sustaining the injunction herein the Circuit Court of Appeals has ruled contrary to the applicable decision of this Court in *The Hecht Company* v. *Bowles, etc.*, 321 U. S. 321.

WHEREFORE petitioner prays for the issuance of a Writ of Certiorari to said United States Circuit Court of Appeals for the Seventh Circuit in conformity with the applicable Acts of Congress and the Rules of the Supreme Court of the United States; and that upon the consideration of this petition, said Writ be allowed.

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